

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 WRIT PETITION NO.7547 OF 2021

Gautam s/o Kastursa Sahuji

... Petitioner
(Orig. Deft. No.1)

Versus

Satesh Babulal Patel & Ors.

... Respondents

...

Advocate for the Petitioner: Mr. R. R. Totla

Advocate for Respondent No.1: Mr. Vilas K. Patil

...

CORAM : AVINASH G. GHAROTE, J.

DATE : 12th July, 2021

PER COURT :

. Heard Mr. Totla, learned counsel for the petitioner and Mr. Patil, learned counsel for the respondent No.1.

2. The suit for eviction, before the Trial Court, by the respondents, was in respect of shop premises admeasuring 145 sq. ft. on the ground floor of Municipal House No.2-15-59 (old), 4-6-74 (new) situated at Supari Hanuman Road Aurangabad, in respect of which, a decree of eviction has been passed by the Trial Court, which has been confirmed by the Appellate Court. The rent admittedly was Rs.125/- p.m. and the premises are in occupation of the petitioner, since 1958.

3. Mr. Totla, learned counsel for the petitioner submits, that the need, which is portrayed, does not survive, as the adjacent premises which also were tenanted to one Mr. Tandale, have been vacated in a compromise between the landlord and the said Mr. Tandale, before the Hon'ble Apex Court. Mr. Totla, further contends, that the need which is considered by the Appellate Court in Para-49 of its judgment, is also incorrect, as admittedly whose need for the business of his electric product is considered, has a fabrication unit under the name and style of "Patel Engineering and Fabrications" at M.I.D.C Chikalthana, for which he invites my attention to the evidence of PW-1 at Exhibit-31. He further submits, that the petitioner, does not have any alternate premises from which he could carry on his business. He also contends, that the landlord, is having a plot at Dagad Galli, on which there is a construction of a room, from which the business could be carried out. He also submits, that a reasonable and fair opportunity, to bring the eviction of the adjacent premises by Mr. Tandale, has not been granted by the Trial Court due to rejection of his application for appointment of a Court Commissioner and production of a document. He further submits, that the landlord himself, had granted consent for acquisition of a portion on the front side, for road widening, which also indicates the absence of any *bona fide* need. He further contends, that a godown ad measuring 97.5 sq.

mtrs. in the adjacent locality by name Kumbharwada, was sold by Mr. Vijay Patel and Dhawal Patel on 29/7/2009 and that another premises, owned by the family, was sold on 31/05/1985. He submits, that in the pleading before the Trial Court need for 16 members in the family is mentioned, suppressing the facts that some of them are in service and doing business. Considering all these, he submits, that there was absolutely no need for the premises. On the point of comparative hardship, Mr. Totla, learned counsel for the petitioner contends, that the findings in this regard by the Trial Court as contained in Para-40 and that of the Appellate Court as contained in Para-51 are contradictory. He further relies upon **M. M. Quacim Vs. Manoharlal Sharma & Ors. 1981 AIR 1113, Tarachand Hansaram Shamdasani Vs. Shri. Durgashankar G. Shroff and Ors., decided on 12/08/2002, Laxman Shripati Yadav & Ors. Vs. Dhirajrai Nanabhai Khatri, decided 26/2/1980, Badrinarayan Chunilal Bhutada Vs. Givindram Ramgopal Mundada, decided on 15/1/2003 and Addissery Raghavan Vs. Cheruvalath Krishnadasan in Civil Appeal Nos.2528-29/2020 decided on 8/6/2020.**

3. Mr. Patil, learned counsel for the respondent/landlord submits, that initially, a suit for eviction on account of *bona fide* need was filed in the year 1985, under the Hyderabad Houses (Rent

Eviction and Lease) Control Act, 1954 (hereinafter 'the Act' for short), which was decreed, appeal against which was dismissed. However, the revision before the High Court, came to be allowed, on account of absence of pleading, that the landlord should have existing business, as was the requirement, under the Act. A further challenge by the landlord to this before the Hon'ble Apex was turned down. It is further contended, that thereafter in 2012, the proceedings before the Trial Court have been initiated on account of the expanding family of the landlord. The need has been spelt out in Paras 5,6 & 7 of the plaint, and has been upheld by the Trial Court as well as the Appellate Court. He further submits, that the tenant, is having his own premises in the same lane at a distance of about 300 ft. from the suit premises, which distance is disputed by the learned counsel for the tenant who also contends, that the premises is residential one occupied by the family and unsuitable for business. He further submits, that the comparative hardships are in favour of the landlord, as the tenant, can use his residential premises, for a commercial purpose also. He therefore submits, that the petition needs to be dismissed as the landlord is the best judge for his own need.

4. I have considered the rival contentions. This is a case, in which, the landlord, has been trying to get possession of the

premises, since 1985, which attempt as noted above, was unsuccessful. The present proceedings are under the provisions of Section 16 (1)(g) of the Act seeking the eviction of the tenant, and possession of the premises, on account of *bona fide* need.

5. It is an admitted position, that the family of the landlord, is a growing one, as is reflected from Paras 5,6 & 7 of the plaint, in which, it has been stated, that there were about 28 members in the family of the plaintiff, who were well educated, some of whom, were already in business and employment. The need, has been specifically pleaded in Paras 6 and 7 of the plaint, regarding the requirement of the various members of the growing family for accommodation for conduct of the profession/business. It is material to note, that the need pleaded, is not in respect of a singular person, or a singular nature, but is an over all need in respect of the growing family. In such circumstances, the finding has been rendered by the Trial Court, as recorded in Paras 34 and 36, which has been confirmed by the Appellate Court as recorded in Para 49, that there were about 16 members in the family and the need of 4 members stated therein, who were in need of premises, indicated, that the need was in present, reasonable and *bona fide*, cannot be faulted with. The contention that Pramod, had a fabrication unit at Chikalthana, also does not detract from the bona

fide need for the premises in question as others are already standing in que for their own requirement, considering the extent of the family of the landlord. Though Mr. Totla, learned counsel for the petitioner, submits, that the adjacent premises occupied by Mr. Tandale had fallen vacant, the said position, has been considered by the Appellate Court, after which it has affirmed the decree passed by the Trial Court. The contention of Mr. Totla, that the various properties, belonging to the family of the landlord, have been sold, does not affect adversely, the present *bona fide* need, for the reason, the sales indicated, are of the years 1985 and 2009, whereas the present proceedings are of the year 2012. It is a settled position of law, that the landlord is the best judge of his requirement and when a general bonafide need for the family which is expanding, has been pleaded and proved, it is not necessary, that specific need of a particular person, has to be pleaded and proved.

6. Insofar as the plea regarding comparative hardship is concerned, it is an admitted position on record, that the locality is a growing one, in which, various commercial premises, have been erected since 2012 and it was open for the tenant, to look for a suitable premises therein. Though it has been observed that such a search was made and did not fructify, the same clearly appears on

account of the meager rent of Rs.125/- p.m. being paid by the tenant in respect of the tenanted premises, who does not appear to intend to shell out a higher rent, at which the premises would have been available in the locality. It is also an admitted position, that the premises owned by the petitioner is in the same lane at some distance from the suit premises, which has been found to be at a distance of 350 ft. by the Appellate Court. Though it is contended, that the premises are used for residence, it has not been brought on record, that the ground floor of the same is totally unavailable or unsuitable for the business of sale of suitcases and bags, which the tenant is doing. The further contention, that the landlord has an open plot in nearby locality, and has not made any construction thereupon and the tin shed erected thereupon, could be used for his need, does not appear to be reasonable or logical, for the reason, that the premises is in occupation of the petitioner, have been found to be more suitable for the proposed business. The contention by Mr. Totla, that the findings on account of comparative hardship in Para 40 of the Trial Court, are contradictory, are also without any substance, in view of, the fact, that the courts below, have found that the city is a growing one and the members of the family of the landlord, cannot be expected to sit idle, in the hope that the eviction proceedings would ultimately culminate in their favour.

7. The reliance by Mr. Totla, learned counsel for the petitioner, on **M. M. Qasim** (Supra), is misplaced, as the present case, is regarding the *bona fide* need of the growing family and not in respect of a particular person or a particular use. The reliance on **Tarachand Hansaram Shamdasani** (Supra), is also misplaced, for the reason that the transaction regarding transfer of immovable property adverted to by Mr. Totla, are of the years 1985 and 2009 much before the present proceedings were instituted in the year 2012. In **Badrinarayan** (Supra), the question of partial eviction, meeting the *bona fide* need, was considered, however considering the area in occupation of the tenant, in the present case being, 145 sq. ft., the same is clearly not attracted. **Addiserry Raghavan** (Supra), was a case, in which the Commissioner's report stated, that there were 36 rooms in the building out of which some of them, in occupation of the landlord were lying vacant, in face of which, *bona fide* need pleaded, was declined, is also not applicable on the facts of the present case.

8. In view of what has been stated above, I find that the judgments of the courts below are well reasoned and have considered the issue of *bona fide* need, in light of the growing family of the landlord and also the comparative hardship, in the correct perspective, and therefore, cannot be faulted with. The

petition is, therefore, without any merits and is, therefore, dismissed.

(AVINASH G. GHAROTE, J.)

Sameer